

1 **IN THE UNITED STATES DISTRICT COURT**
2 **WESTERN DISTRICT OF MISSOURI**
3 **SOUTHERN DIVISION**

4 ANDREW TYLER FOSTER, et al.,)
5)
6 Plaintiffs,) No. 15-03519-CV-S-BCW
7) September 22, 2016
8 v.) Kansas City, Missouri
9) CIVIL
10 L-3 COMMUNICATIONS EOTECH,
11 INC., et al.,)
12)
13 Defendants.)

14 **TRANSCRIPT OF TELECONFERENCE**

15 **BEFORE THE HONORABLE BRIAN C. WIMES**
16 **UNITED STATES DISTRICT JUDGE**

17 **Proceedings recorded by electronic stenography**
18 **Transcript produced by computer**

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SEPTEMBER 22, 2016

THE COURT: Good morning, counsel.

MR. DOLLAR: Good morning.

MR. GODFREY: Good morning, Your Honor.

6 THE COURT: Well, I think we've got a count of who
7 all is on the phone call. Who is going to speak on behalf of
8 the plaintiffs?

MR. DOLLAR: Tim Dollar, Your Honor.

THE COURT: Okay. And on the defense?

MR. GODFREY: Richard Godfrey, Your Honor.

THE COURT: Okay. Mr. Godfrey, great. Great.

13 Well, let me take up a couple of matters. I've
14 received the -- or I've had an opportunity to review the motion
15 in opposition as it relates to appointment of interim counsel.
16 It is my plan to get out an order on that next week. But my --
17 I can tell you my decision with respect to that is to
18 appoint -- to grant the said motion to appoint. The Court
19 understands arguments presented by the defense, but I think in
20 the end, in a lot of ways, I think that just supports the
21 reasons why I should. And so -- but I'll get that out in an
22 order.

Now, my main concern is this. We have a position statement concerning the scheduling order, and we're not able to come to agreement. So let me tell you all how I typically

1 handle these type of cases, and then you all are free to
2 comment or tell me how we can get to that point.

3 Now, with respect to allowing merits or class
4 discovery to proceed simultaneously, typically what I have done
5 is to proceed with class discovery. Now, to the extent there's
6 some overlap, there's overlap, but we do move forward with the
7 class discovery, and to the extent there's overlap. Now, the
8 only caveat in this particular case is we've been sitting on
9 the starting line for a while. Another one of my goals is
10 always to keep cases moving and keep them progressing in an
11 efficient but steady way, and so that would be the slight
12 caveat to that.

13 But to the extent of merit discovery as it relates
14 to class discovery, which I think is the sticking point -- am I
15 wrong?

16 MR. DOLLAR: That would be one of the main sticking
17 points, Your Honor. This is Tim Dollar.

18 THE COURT: Okay. It would be to -- yes, definitely
19 class discovery, but to the extent there's some overlap, in
20 fact, there may be, and I understand that. And then what I
21 have done before is we get at least a tentative scheduling
22 order so we can meet that goal and then we, depending on how
23 the Court rules with that, then we move forward accordingly.
24 Thoughts?

25 MR. DOLLAR: This is Tim Dollar for plaintiff. Yes,

1 Your Honor. I mean, our position is essentially that much of
2 the discovery will overlap, but what I hear the Court saying is
3 to the extent it does, it does, and we can -- certainly the
4 focus can be on the issues related to class certification, but
5 many of those issues, as the Court points out, will be the
6 same.

7 And our only point was we didn't want to be in a
8 position, for the purpose of promoting efficiency and judicial
9 economy and in light of the fact that we've been on the
10 starting line for some time, to have to go around the country
11 and depose a person who might have information that is on class
12 certification but also might have lots of other factual
13 information that would be merit-based, but also go to the point
14 of class certification and have to come back and take that
15 deposition a second time. That seems to be just a waste of
16 time and money, in our view. That's our view.

17 THE COURT: Mr. Godfrey?

18 MR. GODFREY: Two points, Your Honor. No. 1, there
19 will be some overlap with merits discovery, but it will be very
20 limited; and the likelihood that there will be many witnesses
21 on the defense side that are both class and merits is very
22 small. I can go into some detail to give you examples, but,
23 for example, how many units were sold that would have the
24 alleged defect is a fairly precise question. That person is
25 not going to have a great deal of merits-related in terms of

1 the nature of the defect, where the defect manifested itself,
2 whether the plaintiffs or members of plaintiff class would ever
3 have the experience of a manifested defect. And so, of course,
4 on the margins where there's overlap between class and merits,
5 good lawyers can work that out where you're not going to have a
6 witness taken twice.

7 But what the plaintiffs' position is, as we
8 understand it, is that in their view, all of the issues go to
9 both class and discovery, and we just -- that's just not my
10 experience in cases like this, and that basically eliminates
11 the distinction between class and merits.

12 THE COURT: Well, here is my position. The parties
13 get together with the understanding of what I just said is that
14 this -- I don't need specifics. To the extent there is overlap
15 and to the extent that any of these witnesses could be class
16 and merit, then we need to do it at the time that discovery
17 needs to move forward.

18 Now, you know, you characterize it as it's only
19 marginal; Mr. Dollar may say, well, it's not marginal, Judge.
20 Well, you all get together and make this determination with
21 respect to that. The focus should be, though -- my focus is on
22 discovery related to class. And to the extent -- to the end
23 that it overlaps, where we're not cumulative or duplicative
24 coming back to the same people, we need not do that. That's my
25 point, and I'm sure you guys can work it out.

1 MR. GODFREY: Your Honor, we -- this is Rick
2 Godfrey. We agree with that, and we will follow that guidance
3 accordingly.

4 THE COURT: Okay. Next issue, it seems to have
5 dealt with dispositive motions or motions of some sort which
6 would stop discovery. Let me tell you my general rule. If
7 there's a motion to dismiss or some other dispositive motion, I
8 do not stop discovery. I don't do it. So to the extent anyone
9 files -- I don't think there's anything out there, but to the
10 extent someone does, I will deny a motion to stay discovery
11 while the Court rules on it. I just don't do it.

12 MR. GODFREY: Your Honor, this is Rick Godfrey. We
13 understand, and our proposal that we ended up making to the
14 Court was the same that we had made that we felt we had
15 agreement on last February where a motion to dismiss does not
16 stay pending discovery. So we're not at odds with the Court on
17 that issue.

18 THE COURT: Well, great. You're not at odds with
19 me, it's odds with the other side. I mean, I'm just telling
20 you kind of how I do it. So -- well, that's good. Mr. Dollar?

21 MR. GODFREY: We originally proposed to them that,
22 because that made some sense to us. They didn't agree, so we
23 reverted to the proposal we submitted to the Court, was the one
24 that we did before that's on the same page as Your Honor.

25 THE COURT: Okay. Was that Mr. Dollar?

1 MR. DOLLAR: Well, yeah, I mean, I'm not 100 percent
2 sure that's correct, I don't want to misstate anything. But I
3 mean, the simple -- we want to begin and proceed with
4 discovery, period.

5 THE COURT: And so do I want you guys too, and I
6 think we're all on the same page, and motions will not stop
7 this, absent extraordinary circumstances. So I think we're
8 good. I think. Right?

9 MR. DOLLAR: Yes.

10 MR. GODFREY: Yes.

11 THE COURT: All right. The last issue, I'm not
12 sure, related to -- I'm not sure. And Mr. Dollar, explain a
13 little bit. I was reading in the position statement concerning
14 the scheduling order, (c) allowing full or limited nonparty
15 discovery to occur without getting permission of the Court to
16 depose or direct discovery to the -- help me, I'm just not sure
17 exactly what the issue is there between the parties.

18 MR. DOLLAR: Well, the issue for the plaintiff is we
19 just want to follow the rules and conduct discovery that is
20 contemplated under the federal rules. And as the Court knows,
21 sometimes that involves discovery from the parties, but in many
22 cases, as it does and it would in this case, involve discovery
23 from third parties.

24 For some reason, the defendant wants to depart from
25 the federal rules and require plaintiff to seek permission from

1 the Court every time we want to do any discovery not from them,
2 and there's just no basis for that, and it would involve us
3 coming to the Court and involving you in matters that really
4 shouldn't involve or need the Court. We just want to conduct
5 discovery pursuant to the rules.

6 THE COURT: Okay. Counsel, Mr. Godfrey?

7 MR. GODFREY: Yes. Mr. Dollar and his proposal
8 misses a predicate step which Your Honor has already commented
9 on. This very issue, Your Honor, was the subject of discussion
10 with the Court in the last status in February.

11 What is missing from the plaintiffs' proposed
12 scheduling order, but Your Honor identified it early on this
13 morning, is the plaintiffs do not have any focus in their
14 scheduling order or even mention the class, putative class
15 action. And third-party discovery, for the most part, that
16 they're seeking has nothing to do with class issues. It is on
17 the merits, and what we've said from the start is let's settle
18 the pleadings because the pleadings define the scope of the
19 case, and let's determine the class because the class defines
20 the magnitude of the case and whether there's going to be a
21 case. In some cases like this, if the class is denied or if
22 only a state class is certified, it's a much different case
23 than otherwise.

24 And it makes no sense to us -- in most courts, it
25 makes no sense to -- and Your Honor pinpointed this in February

1 because we had this discussion before where, why should we have
2 massive merits discovery through third parties when the issue
3 here is whether or not there is a class and what the nature of
4 the case is to begin with.

5 So when Mr. Dollar says he wants to follow the
6 federal rules, the federal rules do not simply say that in a
7 putative class action you start with massive merits discovery.
8 They give the Court the discretion to fashion the case so that
9 discovery is both efficient and it makes sense. I see no
10 reason why we should have depositions or discovery of 15 or 20
11 third parties on the merits of this case when there may not
12 even be a case and there may not even be a case left if there's
13 no -- if the Court determines there is no class or if the Court
14 determines there's a different class or a smaller class.

15 THE COURT: Well, let me --

16 MR. DOLLAR: The --

17 THE COURT: Go ahead.

18 MR. DOLLAR: I'm sorry, Your Honor, this is Tim. I
19 was simply going to point out that the Court also noted that,
20 and it is true, many of the issues that this Court will need to
21 examine for the class certification do involve the same issues
22 that are relative to the merits. What is the nature of the
23 representation? Was it a representation that was the same made
24 to all? What is the nature and extent of the admissions that
25 were made, and were those uniform to all people who might be

1 similarly situated? All of those really can't be parsed and
2 distinguished out between merit and the arguments for class
3 certification. And so there may be third parties contemplated
4 by the rules that would be the subject to -- of initial
5 discovery.

6 THE COURT: Right. And let me ask this question so
7 I can be clear, Mr. Godfrey. I know in February -- refresh my
8 recollection. I think that's when we had the individual case,
9 is that correct, here?

10 MR. GODFREY: We had the putative class case brought
11 by the Foster plaintiffs.

12 THE COURT: Okay. Hold on, hold on, let me finish.

13 So is that what we're talking about? And then I
14 think at that time, one of the attorneys wanted to be appointed
15 lead counsel, and then they wanted these nonparty subpoenas.
16 And what I ended up saying, well, the subpoena, I think
17 somewhere in New York -- wasn't there some subpoenas? There
18 was nonparty subpoenas being issued, or the request was, and
19 then I kind of stopped that by saying, yeah, issue them. And I
20 think somewhere in New York; is that right? Something like
21 that?

22 MR. GODFREY: Your Honor, that's correct. At the
23 time we had what I thought was an agreed scheduling order where
24 Your Honor addressed this connection with a New York subpoena
25 to the U.S. Attorney's Office.

1 THE COURT: Oh, yeah, that's what -- okay, yeah.

2 Okay, yeah, yeah.

3 MR. DOLLAR: But that was when -- that was just when
4 there was one case and you wanted to proceed, as I understand
5 it -- I wasn't there. You wanted it to proceed in an orderly
6 fashion, and you wanted all of these consolidated, which we've
7 now done, now we should just proceed.

8 THE COURT: So let me -- and let me just tell you my
9 thoughts, and then we'll -- you know, typically -- and I don't
10 think this changes what I said from earlier, and I think one of
11 the -- is counsel on the phone who was on that first case with
12 me?

13 MR. HEIDEMANN: Yes, Judge, this is Craig Heidemann.
14 I'm here.

15 THE COURT: Yeah, Mr. Heidemann. Because what was
16 it, Mr. Heidemann, why did I allow you to do that subpoena? I
17 think there, you know, the take -- the process was kind of
18 longer, wasn't it, and I think it was stopped or delayed.
19 Refresh -- help me there. I'm just going from memory.

20 MR. HEIDEMANN: The U.S. Attorney's Office in New
21 York we believed had the documents that were produced by the
22 defendant in the government prosecution, and we anticipated
23 that it would take a while to litigate the protective order
24 issue --

25 THE COURT: Right, right.

1 MR. HEIDEMANN: -- or the objections to the
2 subpoena. And you said -- we recognized that that was likely
3 to happen, and so you allowed us to get started on that.

4 THE COURT: Right.

5 MR. HEIDEMANN: But you quashed the in-state
6 subpoenas for Midway and Bass Pro.

7 THE COURT: Okay. Right, right. Oh, yeah. Now
8 that -- yeah, okay.

9 You know, here is my thoughts, and I don't know if
10 this is even a guide -- I don't think I changed from any
11 position I've taken. I think the discovery related to class,
12 and to the -- I wouldn't change it -- and to the end, these
13 nonparty folks may have something related to it, then, you
14 know, or there's some cross-over, then I think, you know,
15 discovery. If not, then we move forward with the, you know,
16 class discovery and only the overlap. You know, I don't change
17 that position.

18 MR. DOLLAR: And Your Honor, this is Tim. We don't
19 need to get your permission to do that. If our focus is class
20 certification, we just follow the rules.

21 THE COURT: Yeah, I mean. I mean -- and let me --
22 Mr. Godfrey, do you have any -- you know, I don't know. That's
23 my position on the discovery issue. You know, to the end, we
24 do class, to the extent it overflows into kind of merit and
25 deals with that, then so be it. But, you know --

1 MR. GODFREY: Your Honor, it's hard to argue, and I
2 don't disagree with that, but the devil is always in the
3 details.

4 THE COURT: Sure.

5 MR. GODFREY: Let's focus on the two issues that
6 concern the defendant the most and I think should concern the
7 Court the most.

8 One is we need something in the scheduling order
9 that settles the pleadings because the pleadings ultimately are
10 going to define, you know, whether we have a case and, if so,
11 the nature of the case. And then secondly, we need the class
12 certification schedule after class discovery. Unless we have
13 those two items tied down, we are not going to be able to
14 efficiently manage this, and it's going to be treated as an
15 individual case.

16 THE COURT: Well, didn't I -- hold on. Didn't I
17 just say what I typically do is, in this kind of bifurcated
18 way, is to set up a schedule that's dealing with class
19 discovery, and to the extent that it overflows or overlaps
20 merits discovery, so be it. But what we do is to get a
21 scheduling order up until that point, and once the Court makes
22 some determination, then we have our scheduling order that's
23 going to relate to what's remaining, or the class, or whatever.
24 That's what I said. And that's what the parties need to do.
25 Meet and confer.

1 MR. GODFREY: Your Honor, we agree with that. I did
2 not hear it quite that way, but we agree with that.

3 THE COURT: That was the first thing I said. That's
4 how I typically handle these class actions. We've got to do a
5 scheduling order related to the class discovery, and to the
6 extent, what overlaps -- yeah, I will tell you different in
7 other cases I've had, it seems to me there's a larger amount of
8 these nonparties that are involved in other matters I've had.
9 It just seems -- it just works out that way. But I don't think
10 my general thoughts would change on that, and I don't think
11 counsel needs to get permission from me.

12 I think -- I'm not going to get in the weeds at
13 least at this point. You know, I think I made it clear what I
14 think the discovery should focus on, and, to the extent it
15 overlaps and goes to these nonparties and they have -- there's
16 relevant discovery that relates to the class, then so be it.
17 Now, if there's dispute about that, then, yes, call me.

18 MR. GODFREY: Your Honor, we understand. And our
19 scheduling order, with one exception, does precisely what you
20 just said, our proposed scheduling order. And that was the
21 third-party discovery, but we can modify that accordingly.

22 THE COURT: Yeah, I mean, you know -- okay. Is
23 that -- and, Mr. Dollar, if I'm hearing you, I think that's
24 what -- I know you see it slightly different and you think,
25 hey, Judge, let's just get this case moving and get on with

1 discovery whether there's merit. And so I think the bottom
2 line and part of your concern, or at least what I heard earlier
3 is you don't want this kind of duplication or going back, and I
4 don't want that either. I think to the extent, you know,
5 whether it's a nonparty or any other discovery, and this laser
6 focus on class and they have other information that may be
7 merit-based, then, you know, so be it. I think you're entitled
8 to that discovery at this time.

9 MR. DOLLAR: Right. I mean, as I understand it,
10 what the Court is telling us is, one, we do not need to get
11 pre, you know, permission from the Court to do third-party
12 discovery if the focus of that discovery is on the issues, as
13 we see it, related to class certification, we should proceed
14 and we are able to proceed. And to the extent that a witness,
15 a document, or other from a third party or this defendant
16 overlaps into the merit issues, take it, do it, and get moving.

17 THE COURT: Yeah, it sounds like we're all on the
18 same page, so why don't we do this. You know, I still want to
19 be able to -- you know, you all meet and confer, and then we
20 get back on the phone just so we shore up everything in terms
21 of that. And then, you know, I'll be out of your hair unless
22 and until you all want another conference call. So why
23 don't -- you know, what, two weeks?

24 MR. DOLLAR: Sure. Because I do anticipate, Your
25 Honor, just hearing the comments on this call, while I would

1 prefer that we not have to put you in the weeds, my guess is
2 that when we have a next conference with our opposing counsel,
3 we're likely to have disputes about whether a particular
4 request we have really is --

5 THE COURT: Sure.

6 MR. DOLLAR: You know, whether it overlaps. But I
7 think we should make an effort at that, and we will.

8 THE COURT: Sure. And, you know, I don't disagree.
9 I mean, and not that I don't -- you know, sometimes I have to
10 get in the weeds to kind of be clear when we have kind of a
11 situation and then, you know, once we resolve that, that will
12 kind of impact other issues that come up. So to the extent we
13 need to do that, I think it's helpful. If we do it early on,
14 then it cuts down on stuff later. So I don't mind that.

15 We'll get back on, let's say, October 6 at 9
16 o'clock. Hopefully we'll have a scheduling order proposed by
17 the parties. Now, to the extent that we need to adjust parts
18 of it, you know, or talk about parts, fine. But if you agree
19 on most, then, you know, that's fine with me, and then we'll
20 talk about the others and then we'll just move forward from
21 there.

22 MR. GODFREY: Your Honor, this is Rick Godfrey, and
23 that sounds fine. There's two other issues I'd like to raise
24 with the Court, though, so that we have some guidance.

25 THE COURT: Okay.

1 MR. GODFREY: No. 1 is we now have a new complaint
2 filed the 19th. We do not have a responsive pleading date, but
3 I would think that until we have the scheduling order, we
4 should not set a responsive pleading date. That is, a move or
5 otherwise plead. Otherwise, we'd like to have until November
6 3rd to move or otherwise plead. I don't know what we'll be
7 able to work out on that, but right now we still have a stay
8 that continues, and we'd like to just get clarity on the
9 responsive pleading date or motion practice that we have as to
10 that complaint.

11 THE COURT: Okay. Let me ask you, you said we have
12 a stay. I think you guys had a stay.

13 MR. GODFREY: Actually, Your Honor, Your Honor
14 entered a stay.

15 THE COURT: Well, I entered a stay to a certain day,
16 and then I had something and I looked in my file, and it said,
17 "hey, we as parties agree on this." And it wasn't a request,
18 it was like, hey, we agree on this. And I was like, well,
19 that's wonderful they agree on it, but just because you file it
20 in the court and you guys agree on it doesn't mean I agree on
21 it. So I may beg to differ a little bit on that stay because
22 it wasn't -- because there was no response from the stay giving
23 you guys approval or giving you guys opportunity. I didn't say
24 anything about it because I wanted to let it ride.

25 And that's why I called a conference call, to get

1 this case moving. Because in my mind, unless and until I
2 ruled, it wasn't a stay. You guys -- you guys just decided,
3 "hey, Judge, we're trying to settle this thing, I want a stay."
4 That's my recollection, but I'm not looking at the document
5 right now, but I don't think I ever --

6 MR. GODFREY: Actually, Your Honor, there was a
7 stay, and what we did was --

8 THE COURT: There was a stay, but it wasn't the stay
9 that you guys suggested the date.

10 MR. GODFREY: No, it was -- that's correct, Your
11 Honor.

12 THE COURT: I know.

13 MR. GODFREY: All I was saying, Your Honor, is we
14 need to have a responsive pleading date. We would suggest
15 November 3rd.

16 THE COURT: Okay. Well, let's focus on that because
17 we're not under a stay because my stay ended. Your stay or
18 your parties' stay, which was never ratified by me, is just
19 that. It was never. It was just like, okay, these guys want
20 until this time, but it wasn't put into motion, like, here is
21 what we're doing, Judge.

22 So anyway, Mr. Dollar, what's your position on that?

23 MR. DOLLAR: Well, I -- we take the position as the
24 Court said. There's no stay. We should proceed. But --

25 THE COURT: No, I just -- with the time frame. With

1 the time frame.

2 MR. DOLLAR: Sure. I am confident we can work a
3 responsive pleading date out. That shouldn't be controversial,
4 and we can do that in a conference between the two of us.

5 THE COURT: Yeah, I don't think that's --

6 Mr. Godfrey, I don't think that's a big deal, hearing what I
7 hear. That's fine with me.

8 MR. GODFREY: Well, Your Honor, that's good news,
9 but it's not in their draft order of what I'm asking you this
10 morning. Maybe we need to have a conference offline with
11 Mr. Dollar. I'm suggesting November 3rd so we have clarity
12 about this so I don't have to run around and do stuff this
13 week.

14 MR. DOLLAR: No, I agree with that. We'll get on
15 the phone, and we can work that out.

16 THE COURT: Okay. November 3rd. Okay. What's the
17 second issue?

18 MR. GODFREY: The second issue is just a brief
19 report to the Court. The parties have made progress in
20 mediation. We'll continue to meet on that. I was going to ask
21 the Court, because the Court's already clarified the first
22 issue, whether we should stay all proceedings until the next --
23 until October 6th because the parties are either I think by
24 that time going to be very close, if not have reached a
25 settlement, or they're not going to reach a settlement. I

1 think that the parties have made in the last ten days
2 significant progress. I think there are two open issues. I
3 think that -- we have communicated through the mediator, I
4 think that we're waiting to hear back from the plaintiffs, but,
5 you know, the parties have made progress.

6 And so I would prefer -- well, obviously, we're
7 going to get the scheduling order worked out, but I would
8 prefer to try to put our efforts in the next two weeks into
9 seeing if we can settle this matter, subject to Your Honor's
10 approval, of course. But I thought I would raise that issue
11 and also just report to the Court that we've actually made some
12 progress. Whether we can reach closure or not I think is still
13 unknown, but we've made more progress than I had hoped to at
14 one point. So I'm somewhat optimistic, but I'm not overly
15 optimistic. I'm just somewhat optimistic, I'll put it that
16 way.

17 THE COURT: Mr. Dollar, what are your thoughts on
18 that?

19 MR. DOLLAR: I am not optimistic, but I don't think
20 we should stay -- I think we should get the case going. If
21 discussions are productive, they're productive; if they're not,
22 they're not. But we should -- we've been on the starting line
23 for some time, and we should just proceed, and it doesn't
24 prevent anybody from having discussions, we always do that.
25 And we are -- I'm going to have a communication back to the

1 mediator this afternoon, but it shouldn't prevent us from
2 getting the case going. We are not settled, and the issues
3 that remain open are significant, and there remain significant
4 hurdles to resolution. But I am always going to be open to
5 discussion. And, as I say, I'm going to communicate back with
6 the mediator this afternoon, but it shouldn't prevent us from
7 moving forward.

8 THE COURT: Yeah, you know, the thing is, I want
9 to -- why don't we look to October 6th. I think -- I'm not
10 going to stay it until that date. I've stayed it, this case
11 has been around. You know, I want to get it moving. To the
12 extent we have to just work on a dual track, try to get it
13 settled, if you can, if not, we'll move forward on the
14 scheduling order and we just go from there.

15 So I'll get you guys back on the phone on October
16 6th at 9 o'clock, and we'll -- hopefully there will be
17 agreement on most, if not all, and those things that you're not
18 on agreement with, we'll work them out on the phone and we'll
19 get moving.

20 MR. DOLLAR: Thank you.

21 MR. GODFREY: Your Honor, thank you very much.

22 THE COURT: All right. Thank you all. I appreciate
23 you getting on the phone.

24 (Teleconference concluded.)

25 - - -

CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

6 || September 26, 2016

/s/ _____
Kathleen M. Wirt, RDR, CRR
U.S. Court Reporter